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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 CR 217 (KMW)

5 GORDON FREEDMAN, JEFFREY
6 GOLDSTEIN, TODD SCHLIFSTEIN,
7 DIALECTI VOUDOURIS, and
8 ALEXANDRU BURDUCEA,

Defendants.

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9
10 New York, N.Y.
11 September 20, 2018
12 1:30 p.m.

13 Before:

14 HON. KIMBA M. WOOD,

District Judge

15 APPEARANCES

16 GEOFFREY S. BERMAN

17 United States Attorney for the
18 Southern District of New York

19 NOAH SOLOWIEJCZYK

DAVID ABRAMOWICZ

Assistant United States Attorneys

20 FASULO BRAVERMAN & DiMAGGIO, LLP

Attorneys for Defendant Freedman

21 SAMUEL M. BRAVERMAN

22 BRAFMAN & ASSOCIATES, P.C.

Attorneys for Defendant Goldstein

23 MARC AGNIFILO

24 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Attorneys for Defendant Schlifstein

25 ALEX SPIRO

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1 APPEARANCES (Continued)

2
3 THE HOFFINGER FIRM, PLLC
Attorneys for Defendant Voudouris
4 SUSAN HOFFINGER
MARK W. GEISLER

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6 LEVITT & KAIZER
Attorneys for Defendant Burducea
RICHARD LEVITT

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1 THE DEPUTY CLERK: The court now calls the United
2 States v. Freedman, Goldstein, Schlifstein, Voudouris, and
3 Burducea. Will counsel please state their appearances.

4 MR. SOLOWIEJCZYK: Good afternoon, your Honor. Noah
5 Solowiejczyk and David Abramowicz for the government.

6 THE COURT: Very good.

7 MR. BRAVERMAN: Good morning. Sam Braverman, Fasulo
8 Braverman & Di Maggio for Mr. Freedman who is the second
9 gentleman in from the Court's right in the front row.

10 THE COURT: Thank you.

11 MR. AGNIFILO: Good afternoon. Marc Agnifilo, and I
12 represent Dr. Goldstein who is sitting right behind me in the
13 front row.

14 MS. HOFFINGER: Susan Hoffinger, and I represent
15 Dr. Voudouris who is sitting right behind me.

16 MR. LEFITT: Richard Levitt for Dr. Burducea who is
17 seated behind me. Good afternoon, your Honor.

18 THE COURT: Good afternoon.

19 MR. SPIRO: Good afternoon, Judge. Alex Spiro.
20 Dr. Schlifstein is here who I represent in the first row.

21 THE COURT: Very good. Let me ask government counsel
22 to bring me up to date.

23 MR. SOLOWIEJCZYK: Your Honor, the government has made
24 a series of very substantial discovery productions in this
25 case. They have consisted of, among other things, e-mail

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1 productions, medical records, patient records, financial
2 records, some e-mail search warrant returns, sign-in sheets
3 from the speaker programs that are at issue in this case,
4 that's just some examples of the stuff we've produced. I think
5 it's fair to say it is a voluminous production.

6 The government anticipates it's substantially done
7 with discovery with one caveat. There is a case in the
8 District of Massachusetts that relates to certain executives of
9 the pharmaceutical company that is at issue in this case.
10 There is some limited additional discovery that the government,
11 that the District of Massachusetts has produced in their case.
12 And we plan to get a copy of that and produce that to these
13 defendants out of an abundance of caution, just so they can
14 have everything that's potentially relevant to them.

15 THE COURT: Good. Have you discussed with defense
16 counsel any motions schedule?

17 MR. SOLOWIEJCZYK: Yes, your Honor. What we're hoping
18 to do today, your Honor, is both set a motion schedule but also
19 get a trial date from your Honor. Given there's so many
20 defense counsel, we want to make sure we get something on the
21 calendar.

22 THE COURT: I think that's a very good idea.

23 MR. SOLOWIEJCZYK: This will be a relatively lengthy
24 trial.

25 THE COURT: Right.

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1 MR. SOLOWIEJCZYK: So we had preliminarily discussed a
2 motion schedule which I think -- and defense counsel can
3 correct me if I'm wrong -- would have defense motions being due
4 on January 22 of 2019, government's opposition being due
5 February 27 of 2019, and any replies being due on March 20 of
6 2019.

7 MR. BRAVERMAN: Judge, on behalf of the defense, we
8 agreed to those dates.

9 THE COURT: All right. You said March 20?

10 MR. SOLOWIEJCZYK: Yes, your Honor. In terms of a
11 trial date, your Honor, our understanding from the defense
12 counsel is between the five of them, we anticipate, your Honor,
13 this trial could be as long as potentially six weeks. That's a
14 conservative number, because I think it is always better to say
15 maybe a little longer than a little shorter. But six weeks
16 potentially.

17 Given that, the defense counsel have told us that the
18 earliest that they're all available would be November of 2019.
19 What we'd ask your Honor is that, to the extent other cases go
20 away or plead out, that we can hopefully move that date up a
21 little bit. Because this case was indicted in March of this
22 year.

23 THE COURT: What stands in the way of an earlier date?
24 Counsel's trial obligations?

25 MR. AGNIFILO: Yes, Judge, Marc Agnifilo. I can

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1 start. Judge Garaufis in the Eastern District of New York, I
2 have a fairly involved trial in front of Judge Garaufis
3 involving this alleged sex cult which has gotten some
4 notoriety. And Judge Garaufis gave me an order that I'm not to
5 take anything other than his case between January 1st and
6 June 30 of 2019.

7 THE COURT: I didn't know judges could do that.

8 MR. AGNIFILO: Well, I believe it's never too late.
9 So, he went and did. And I have another lengthy trial, it is a
10 Manhattan DA's Office case involving an explosion on the Lower
11 East Side where people unfortunately lost their lives. That's
12 piggybacking behind the federal case with Judge Garaufis. So
13 that brings me into the fall of 2019.

14 THE COURT: The Garaufis case begins trial when?

15 MR. AGNIFILO: So we have a trial date right now of
16 January 7. But Judge Garaufis just deemed it a complex case.
17 So I think it's going to move maybe until February or March.
18 And that's the reason I think Judge Garaufis gave us this
19 six-month period so that he, quite frankly, he has the
20 flexibility to use any portion of the six months. It is
21 probably about a two-month trial at the end of the day. It is
22 a six-defendant case involving sex trafficking and
23 racketeering. It is a fairly involved trial.

24 So I know that wreaks havoc on other judges and I
25 apologize. And I will be wherever whatever judge tells me to

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1 be whenever. That is what I'm sitting with at this point.

2 THE COURT: That trial is due to last how long? The
3 sex cult trial is due to last how long?

4 MR. AGNIFILO: Between six and eight weeks.

5 THE COURT: Is there any chance of it settling?

6 MR. AGNIFILO: Not with my client. There is a 15-year
7 mandatory minimum, and it is a very novel theory we believe, so
8 I don't think it will plead.

9 THE COURT: How long have you been on this case? This
10 one.

11 MR. AGNIFILO: Oh, this case. From close to the
12 inception. So, in the spring, I think it was probably March of
13 this year.

14 THE COURT: Is there someone else from your office who
15 could take over your role?

16 MR. AGNIFILO: Not really, Judge. There is really
17 just me and Mr. Brafman. I think Mr. Brafman is tied up with
18 Weinstein, which is going to be a trial. So I think it is
19 probably just me. We're really the only two who try cases in
20 our office. We have seven lawyers, and only two of us really
21 try cases.

22 THE COURT: Okay. I understand.

23 MR. BRAVERMAN: Judge, if I might add one additional
24 issue to that. One of the other additional issues here is that
25 the government is, as they have said, has been quite forthright

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1 in giving us voluminous discovery. That is in excess of four
2 terabytes or approximately twice the size of the Library of
3 Congress. In the millions of documents we have to review.
4 We're working our way through those for our motion practice,
5 which is likely to take us into at least April for decision as
6 it is.

7 At that point, one of the things we are also talking
8 about with the government is some disclosure of their -- and
9 we've been working with them to try to set a schedule, but the
10 404(b) items which we expect are coming, the severance issues
11 which we might be making, those things. We think that's still
12 likely to consume much of the first half of 2019 as it is.

13 So, if we were to do all our motion practice and the
14 review of these government exhibits prior to trial, that still
15 take us into the summer. And if my colleague is going to be on
16 trial, there is only so much room before that anyway.

17 So in furtherance of that, Judge, we think that we're
18 all trying to block this out to make this -- I know, for
19 instance, my client can't practice as this is pending. So it
20 is ruinous to him to wait as long as he has to wait. But
21 nonetheless, we're all trying to make this as early as
22 possible. Understanding that everybody has an interest in a
23 reasonable but prompt discussion of the facts. So we think
24 this is the closest we can get there, Judge.

25 THE COURT: Is there any prejudice to the government

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1 if we put it off until November?

2 MR. SOLOWIEJCZYK: Not beyond sort of the usual types
3 of prejudice that would result, your Honor.

4 THE COURT: You mean fading memories?

5 MR. SOLOWIEJCZYK: Exactly, your Honor.

6 THE COURT: So it would be reasonable to put it in
7 early November.

8 MR. SOLOWIEJCZYK: Yes, your Honor. I guess the only
9 thing we'd ask, if, for example, Mr. Agnifilo's case goes away
10 unexpectedly, that he let everybody know, and perhaps we could
11 move it up at that point.

12 THE COURT: Yes. If that case were to go away, please
13 notify me and the other counsel within 24 hours.

14 MR. AGNIFILO: I will do that, Judge. Yes, thank you.

15 THE COURT: Then we'll have a conference.

16 MR. AGNIFILO: Very good.

17 THE COURT: That week.

18 MR. AGNIFILO: Very good. Yes, thank you.

19 THE COURT: I have another criminal trial starting
20 November 1st. I'd like to set this for November 5. I don't
21 want to get close to the holidays because we would tend to lose
22 jurors, as you know. I do have a trial, a one-week trial ahead
23 of you on the 5th, but I think it may well plead out. So let's
24 set the trial date.

25 The calendar I have here does not go that far. Does

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1 anyone have a calendar?

2 MR. SOLOWIEJCZYK: We do, your Honor. So November 5
3 is actually a Tuesday. I don't know if you would want it to be
4 the 4th instead. I'm not sure.

5 THE COURT: What's the earliest weekday in November?

6 MR. SOLOWIEJCZYK: Friday the 1st. I don't know if
7 your Honor wants to start on Friday.

8 THE COURT: No. The jury administrator won't do that.

9 MR. SOLOWIEJCZYK: So then it would be November 4th.

10 THE COURT: We'll set it November 4, 9:30 a.m. We
11 should have the jury, given that we'll be first case picking
12 that day, I think. We might get our jury by 10, 10:30. We can
13 deal with any new motions in limine or any loose ends can be
14 dealt with between 9:30 and 10 or 10:30.

15 While we're on the subject of trial, I'd like to
16 mention that I try cases from 9:30 in the morning until 2:30 in
17 the afternoon with half an hour for lunch, which has turned out
18 to be to everyone's satisfaction, the lawyers, the jurors,
19 everyone. It gets in a full trial day. And given the length
20 of the case, I may well sit on Fridays. As we get closer to
21 the date, I'll decide.

22 Is there any objection to an exclusion of time between
23 now and November 4, 2019?

24 MR. BRAVERMAN: No objection, your Honor.

25 THE COURT: In light of the fact that defense counsel

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1 need time to review discovery and to make any motions, I find
2 that an exclusion of time from today through November 4, 2019,
3 is in the interest of justice and that those interests outweigh
4 the interests of the defendants and the public in a speedy
5 trial. I thus exclude that time.

6 While we are on the subject of trial, I have a memo on
7 trial procedures. I have a memo on picking juries. If you
8 could just check with my, whenever you're ready to consider
9 that, call my deputy or look at the rules I have posted. I'm
10 not sure that I have posted everything my deputy has, so I
11 suggest that you contact my deputy.

12 We ought to pick a date for voir dire and request to
13 charge. Do we have a date about two weeks before November 4?
14 Why don't we make it three since I'll be on trial.

15 MR. SOLOWIEJCZYK: Your Honor, that would be
16 October 14, 2019.

17 THE COURT: Good. On October 14, 2019, I need to have
18 you submit all on one disc your voir dire, that which is
19 agreed, and then any that are disagreed, telling me what they
20 are.

21 MR. SOLOWIEJCZYK: Your Honor, actually I just noticed
22 that the 14th is Columbus Day. I don't know if we want to make
23 it the 15th instead.

24 THE COURT: We'll make it the 15th.

25 With respect to request to charge they, too, should

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1 all be on same disc with the government's first request first,
2 and the defense response to that first. The response being
3 redlining and any authorities you have. I think that's all I
4 need to mention on that.

5 Is there anything else anyone would like to raise?

6 MR. SOLOWIEJCZYK: Your Honor, so just to confirm,
7 defense motions will be due on January 22, 2019, government
8 opposition the 27th of February, 2019, and defense reply on
9 March 20, 2019.

10 THE COURT: That's correct.

11 MR. SOLOWIEJCZYK: Thank you.

12 THE COURT: Did everyone hear that?

13 MR. BRAVERMAN: Yes, we did, your Honor. Judge, just
14 two other matters if I could. One is that we're in
15 consultation with the government now about amending the
16 protective order to allow our clients to have greater access to
17 these documents and not have to travel to our offices to review
18 it. I think we're going to reach an agreement on just about
19 all those issues. If we do, can we present to the Court a new
20 protective order that the parties agreed to, to allow the
21 clients greater access?

22 THE COURT: Of course.

23 MR. BRAVERMAN: Okay. And the other one I wanted to
24 raise was two others. I intend to request to the Court to
25 consider a jury questionnaire in this case, given nature of the

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1 charges and the press that's been -- there has been an enormous
2 amount of press on this.

3 THE COURT: Really?

4 MR. BRAVERMAN: I would like to, Judge. I found in
5 charges like this or highly complicated cases for which there
6 is a lot of press about things, and we know there has been a
7 lot of press about these issues recently about fentanyl and
8 other drugs like that, I could then submit that to the Court
9 well in advance of the date the Court has proposed so the Court
10 could consider that, still maintaining our schedule.

11 So if I gave a motion to the Court and a proposed
12 questionnaire let's say in September, that would still give the
13 Court and the parties an opportunity to review it, consider it,
14 and let the Court reach a decision and go from there.

15 THE COURT: Certainly I'll consider a written
16 questionnaire to be answered in writing. That would be
17 administered by the jury administrator.

18 MR. BRAVERMAN: Yes, exactly.

19 THE COURT: What I prefer is for you to confer ahead
20 of time before you propose something. Confer among all defense
21 counsel and with the government, see if you can come up with a
22 joint proposal for a questionnaire. The jury administrator
23 needs a fair amount of time to get the jurors in to administer
24 it, and then it takes time for copies to be made for all
25 counsel, and then for counsel all to confer about who you agree

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1 to let go, who you don't agree to let go. If you all agree to
2 let a juror go, I'm very likely to simply let the juror go.
3 I'll assume you have good reasons. But I'd need to see it,
4 then the jury administrator needs to see it. Try to have it
5 ready four weeks ahead of time.

6 MR. BRAVERMAN: Absolutely, Judge. I've done it with
7 Judge McMahon. Judge Cogan did it. It does take a lot of work
8 to get it done, but in the end we picked a jury in a day. So
9 it really made a big difference.

10 THE COURT: It will make a big difference if it's done
11 right. I agree.

12 MR. BRAVERMAN: I hope to do it right, and I'll get it
13 to the Court well in advance.

14 THE COURT: Good.

15 MR. BRAVERMAN: One other issue is on the next court
16 date, which is at this point likely to be for ministerial
17 matters, discussion of dates, can we ask that the defendants be
18 excused from appearing on that court date? Obviously they're
19 required to continue to come back to court, they have a duty to
20 be here. But if on that date we would consider excusing them,
21 absent a final trial conference.

22 THE COURT: Does the government have a view?

23 MR. SOLOWIEJCZYK: No objection, your Honor.

24 THE COURT: All right. They will be excused from the
25 next conference.

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1 MR. BRAVERMAN: Thank you very much.

2 THE COURT: As part of the voir dire, I ask the
3 government to prepare a description of the case and an
4 introduction of the parties.

5 Okay. Anything else?

6 MR. SOLOWIEJCZYK: Nothing further from the
7 government.

8 MR. BRAVERMAN: Nothing further, your Honor. Thank
9 you.

10 MR. AGNIFILO: Nothing from me. Thank you.

11 MS. HOFFINGER: Nothing, thank you.

12 MR. LEFITT: Thank you.

13 THE COURT: Thank you very much. We are adjourned.

14 (Adjourned)
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